[Cite as *In re A.A.*, 2009-Ohio-5884.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: A.A.	C.A. No. 24817
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. DN07-10-0901

DECISION AND JOURNAL ENTRY

Dated: November 6, 2009

CARR, Judge.

{¶1} Appellant, Jessica A. ("Mother") appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child, A.A., and placed the child in the permanent custody of Summit County Children Services Board ("CSB"). This Court reverses.

I.

{¶2} Jessica A. is the mother of A.A., born November 3, 2004. The biological father of A.A. is unknown. On October 1, 2007, CSB filed a complaint in juvenile court, alleging that A.A. was neglected and dependent, and sought temporary custody of the child. The complaint was based on a recent police call to the home of the child's maternal grandmother ("Grandmother"), in whose care Mother had left A.A. When the police arrived, Grandmother had allegedly assaulted a neighbor and appeared to be intoxicated. The police arrested Grandmother on an assault charge, and took the step-grandfather into custody on an outstanding

warrant for child support from another county. Mother could not be reached at the time, and A.A. was therefore taken into custody pursuant to Juv.R. 6.

{¶3} In November 2007, A.A. was adjudicated dependent pursuant to stipulation and was placed in the temporary custody of CSB. The original case plan required Mother to maintain safe, stable housing; maintain stable employment or enroll in a GED or training program; complete a substance abuse assessment and follow all recommendations; and attend parenting classes.

{¶4} On August 29, 2008, CSB moved for permanent custody. Following a hearing, the trial court granted CSB's motion for permanent custody, finding that A.A. could not or should not be returned to either parent and that permanent custody was in the child's best interest. In finding that the child could not or should not be placed with either parent, the trial court relied upon determinations that her father abandoned her, see R.C. 2151.414(E)(10); and that her mother failed to remedy the conditions that caused the child's removal from the home, see R.C. 2151.414(E)(1); demonstrated a lack of commitment to the child, see R.C. 2151.414(E)(4); and was involved in a series of violent relationships that threatened A.A.'s well being, see R.C. 2151.414(E)(16). Mother timely appeals and assigns one error for review.

II.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT ERRED IN FINDING THAT IT WAS IN THE BEST INTEREST OF A.A. TO BE PLACED IN THE PERMANENT CUSTODY OF THE SUMMIT COUNTY CHILDREN SERVICES BOARD."

{¶5} In her sole assignment of error, Mother contends that the trial court erred in concluding that the evidence clearly and convincingly established that it was in the best interest of the child to be placed in the permanent custody of CSB and argues that such a decision was

against the manifest weight of the evidence. She also contends that the court erred in failing to grant an extension of temporary custody.

{¶6} Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period, or that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D). See R.C. 2151.414(B)(1) and 2151.414(B)(2); see, also, *In re William S.* (1996), 75 Ohio St.3d 95, 99. Clear and convincing evidence is that which will "produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

{¶7} When evaluating whether a judgment is against the manifest weight of the evidence in a permanent custody case, this Court reviews the entire record and

> "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175 (overruling *Brittain v. Industrial Commission* (1917), 95 Ohio St. 391).

Accordingly, before reversing a judgment as being against the manifest weight of the evidence in this context, the court must determine whether the trier of fact, in resolving evidentiary conflicts

and making credibility determinations, clearly lost its way and created a manifest miscarriage of justice. See *In re M.*C., 9th Dist No. 24797, 2009-Ohio-5544, at ¶8 and ¶17.

{¶8} As stated above, the trial court found that the first prong of the permanent custody test was satisfied because the child could not be returned to Mother within a reasonable period of time and should not be returned to her care. Mother has not challenged this finding; rather, she challenges only the finding that permanent custody is in A.A.'s best interest. In determining whether a grant of permanent custody is in the child's best interest, the juvenile court must consider: (1) the child's personal interactions and relationships; (2) the child's wishes regarding placement; (3) the custodial history of the child; (4) whether there are appropriate alternatives to permanent custody; and (5) whether any of the factors in R.C. 2151.414(E)(7) to (11) apply. R.C. 2151.414(D).

PERSONAL RELATIONSHIPS

{¶9} The first best interest factor requires a consideration of the child's relationships with Mother; Mother's boyfriend/fiancé, LaRue Copeland; Grandmother; the step-grandfather; and the foster family. A.A. resided with Mother for the first three years of her life. There is a reference in the original case plan to "past referrals to CSB" occurring early in 2007, but there is no proper evidence in the record of prior CSB involvement with the family, and particularly with A.A. If there is a history of CSB involvement that is relevant to the best interest of A.A., the agency would be expected to produce evidence of it at the hearing of this matter, and not merely allude to "referrals" which may be nothing more than anonymous allegations.

{¶10} Mother stated that she left A.A. with Grandmother and the step-grandfather on weekends and for one week when she started a new job and had not yet obtained child care. She acknowledged that Grandmother had an alcohol problem, but also believed that the presence of

the step-grandfather assured proper care. There is no evidence that the step-grandfather provided inadequate care of A.A. - on the day of the child's removal or at any other time.

{¶11} As to the events surrounding the child's removal, Mother testified that she came to Grandmother's home the day after the removal because she was unable to reach anyone at the house by phone the previous evening. According to the psychologist who conducted Mother's parenting assessment, Mother reported that she called CSB over the weekend and was told to call back on Monday. On Monday, according to Mother, "they told me that my 24-hour time period had lapsed to be able to get her back." A.A. was eventually placed in the temporary custody of the agency. CSB did not explain or rebut Mother's assertions about there being a 24-hour time period to retrieve her daughter. Except for leaving A.A. with Grandmother and the step-grandfather at the time of her removal, there is no competent evidence in the record that Mother had not properly cared for her daughter during the first three years of her life.

{¶12} Further evidence of Mother's relationship with her daughter comes from their interactions during visitations. Maria Whalen, the caseworker assigned to this case, specifically indicated that she gauged Mother's progress on parenting skills by observing her with her daughter at visits. To this point, the evidence established that Mother visited very regularly, missing only six or seven visits when either she or her daughter was ill. The caseworker testified that Mother even made up the visits that were cancelled due to sickness. Visits were expanded from one to two hours weekly, at the request of the caseworker, and took place on Thursday mornings.

{¶13} Mother testified that she brought breakfast, toys, clothes, gifts, books and activities to visits. This was corroborated by testimony from the caseworker and Amanda Russell, the guardian ad litem. Mother explained that she waited outside the visitation center for

A.A.'s arrival, and the child called out to her as soon as she saw her and ran to Mother so she would pick her up and hold her. Mother testified that she typically brought crafts, bracelets, or necklaces for A.A. so that she could practice motor skills, and match colors, shapes and sizes. She testified that they colored a lot, played with Barbies, and read stories. Mother said that A.A. asked weekly when she could come home, and Mother would respond that she was working on it and trying. Mother also said that A.A. was often sad at the end of visits, but that she encouraged her to be positive and to understand that she would be back in a week. The caseworker said that any problems generally occurred at the time of separation because A.A. did not want to clean up or put on her coat.

{¶14} The guardian ad litem and caseworker both testified that A.A. did well with Mother at visits and there appeared to be a clear bond between them. The caseworker specifically testified that Mother's interaction with her child was "appropriate" and the guardian ad litem testified that A.A. did "well with her mom at visitation."

{¶15} The caseworker observed several visits and described the child during those visits as follows:

> "She's your typical three, four year old. Very active, very animated, always wanting to have – be busy. Mom has engaged with her in different activities that they have had at the visitation center."

{¶16} The guardian ad litem also observed six or seven visits, and testified:

> "They play together at visitation, they play dolls, they play Barbies, [A.A.] likes to play Barbies, they play games, they read books. Mom brings food for her, appropriate toys for her. She usually brings her a gift every time that I'm there."

{¶17} Mother testified that she wants her daughter back because "[s]he's my heart. * * * [and] my world. I love that little girl to death." She also stated: "I know she will never be at my

mom's again without me, ever * * * [b]ecause I don't want to take the chance of losing my child again."

{¶18} When asked why Mother's visits were supervised at the highest level, the caseworker claimed that there had been "incidents." When asked to explain those incidents, she recalled only two examples. First, the caseworker said that Mother would comb and braid A.A.'s hair and the child did not like that because her hair was long and curly. The staff offered advice to Mother on making the combing easier. The second incident was one where the caseworker believed Mother had "hit" A.A. and "staff had to come down * * * and explained to mom that it's not appropriate to use physical discipline, and they showed her different ways to use time-outs and things of that nature."

{¶19} The record contains no explanation of whether the hair combing continued to be a problem or had any serious consequences to the child. Nor was there any explanation of the circumstances surrounding Mother's hitting of her daughter. The word "hit" can encompass a whole range of behaviors – some serious and some completely innocuous. There was no suggestion that the child was bruised or harmed. Nor was there any explanation of what may have inspired Mother's action. In fact, there was no direct testimony from the person who observed these actions by Mother. Based on this record, it is at least questionable that these events adequately support a decision to closely supervise visits as opposed to allowing visits to progress to a less-supervised status.

{¶20} Following the introduction of this evidence regarding visits, the guardian ad litem concluded by offering a criticism which did not seem to flow from the evidence:

> "One of the things that I have observed, however, is that [A.A.] seems to dominate the visits. It's not necessarily mother parenting. It's more [A.A.] commanding what should happen during those visitations."

In her written update, the guardian ad litem similarly claimed that Mother's bond with A.A. is "not a parent child relationship" because A.A. "runs the show and does as she pleases." She claimed that Mother "makes little to no effort to enforce rules or redirect [A.A.] if she is getting a little too active." The caseworker testified correspondingly that she believed Mother lacked parenting skills. She based this on a belief that A.A. seemed to dominate the visits. She said that Mother does not really parent A.A., but rather that A.A. commands what should happen at the visits. There were no details attached to these criticisms.[1]

{¶21} In terms of specifics, the worst that these criticisms suggest is that this four-year-old child, who apparently was very happy to see her appropriately-behaved mother for two hours a week, and who did crafts, played with dolls, and listened to stories with her mother, got "a little too active" and may have violated unspecified rules. Certainly, there are rules to be followed in a visitation center, and children need to be encouraged to obey them, but the guardian ad litem did not explain what rules were being violated, and the caseworker did not explain what sorts of demands the child was making. When she got a little too active, was the child's safety placed at risk? Or was she just getting a little too loud? When she did as she pleased, was she choosing between reading a story and making a bracelet? Or was she destroying property? Furthermore, these statements by the guardian ad litem and caseworker are not facts upon which the trial judge may make findings. Rather, they are conclusory assertions. Moreover and importantly, this testimony does not provide evidence that clearly and convincingly tends to support a conclusion that permanently terminating the relationship between this Mother and daughter is in the child's best interest.

[1] It may be worth noting that Mother testified that she had been learning in her parenting classes how to provide A.A. with valid choices, so that her daughter might learn a little independence and grow to be a stable person.

{¶22} Before leaving the question of parenting, it should be noted that Dr. Thomas Anuszkiewicz, the psychologist who conducted Mother's parenting assessment and who provided expert testimony on Mother's ability to parent, never opined that Mother was devoid of parenting skills or that she would never be able to properly parent A.A. – as is sometimes the case with expert assessments of parenting ability. In fact, Dr. Anuszkiewicz found that Mother "verbalized adequate parenting knowledge and became increasingly cooperative as sessions progressed."

{¶23} We are troubled by an additional matter - the question of Mother's criminal record and domestic violence between Mother and Mr. Copeland as well as by the uncertainty of the evidence presented on these matters. The trial court did not cite Mother's criminal record in its decision, but did rely on the existence of domestic violence in support of its finding on the first prong of the permanent custody test, which finding was not challenged in this appeal. Nevertheless, since such evidence may also be relevant to the second-prong best interest factors of R.C. 2151.414(D), we address it here.

{¶24} On direct examination, the caseworker was asked whether there was a history of domestic violence between Mother and Mr. Copeland. The caseworker answered in the affirmative, but when she was asked to explain this history, Mother's attorney offered to stipulate to any such convictions between the couple. Neither CSB nor Mother's attorney ever entered a more formal or complete stipulation into the record nor did CSB enter a certified copy of any such convictions into the record. Indeed, it is unclear whether Mr. Copeland was convicted of domestic violence and/or domestic violence menacing. One fact that was made clear is that the incident(s) did not take place while A.A. was in the home, but rather after she was already in CSB's custody. CSB did not introduce any evidence of domestic violence occurring between

Mother and Mr. Copeland while A.A. was living with them. For her part, Mother told the parenting assessor that Mr. Copeland never physically abused her and "if he [did] I still wouldn't be with him." She also testified that the menacing charge was based on a verbal argument that got "a little too loud for the neighbors."

{¶25} To this point, CSB has included an argument in its appellate brief, claiming that A.A. witnessed domestic violence and that it threatened the child's "well-being." In attempted support of the claim, CSB cites to a page in the transcript which does not support this claim at all. On direct examination, the caseworker stated that A.A. was in counseling because of her exposure to domestic violence, apparently implying that A.A. witnessed domestic violence between Mother and Mr. Copeland. The record reveals this follow-up question to the caseworker and her response:

> "Q. Do you have any information on what kind of domestic violence she had been witnessing?
>
> "A. I know the one report that I had read was in regards to – it wasn't actually domestic violence. She had witnessed a cat being killed and thrown in a dumpster, so that's trauma induced, and then the ongoing adjustment to being separated from her relatives."

As reprehensible and disturbing as this incident involving the cat is, there is no connection to Mother or Mr. Copeland. There were no additional details in the record about the incident.

{¶26} In addition, CSB offered certified copies of two journal entries into evidence, showing that Mother had been convicted of soliciting in December 2007 and disorderly conduct in October 2008. These offenses took place during the time the child was in CSB custody. At the time of the hearing, Mother also admitted upon questioning that there was an outstanding warrant for her arrest. The caseworker speculated that this warrant was in regard to a disorderly conduct charge. The basis for the warrant was never verified and little else was introduced into

the record on any of these matters. According to the psychologist who conducted the parenting assessment, Mother admitted to him that she also had convictions for petty theft and the unauthorized use of property. No documentation for these convictions was entered in the record and no date was given for them. As noted, the trial court did not see fit to rely on any of these matters in its opinion.

{¶27} Next, as to the child's relationship with Grandmother and the step-grandfather, Mother described it as a "[g]reat" relationship. She said the child loves them, plays with them, and talks to them. They were not initially placed on the visitors list, but at Mother's request, and with the apparent assent of CSB, they were permitted to visit and did so. No witness offered any negative testimony about their interaction with the child during visits.

{¶28} By all accounts, A.A. also had a very good relationship with Mr. Copeland. Mother testified that she and Mr. Copeland had been together five years, all of A.A.'s life, and that A.A. calls him "daddy." Mother stated that they were engaged to be married in May 2009. During these proceedings, Mr. Copeland visited A.A. every month, which was as often as CSB allowed, and, according to Mother's undisputed testimony, he never missed a visit. Mother testified that, at visits, he pushed A.A. around in a little car and often played Barbies with her. In general, she said they "have a ball" together. The CSB caseworker affirmed that Mr. Copeland's visits were appropriate, that he engages with A.A., and that the child interacts well with him. Neither the caseworker nor the guardian ad litem offered any negative testimony about the interaction between Mr. Copeland and A.A.

{¶29} As to A.A.'s relationship with the foster parents, the caseworker testified that A.A. appeared to be bonded to them and had a good relationship with the infant in the home. When asked about A.A.'s care in that home, the caseworker testified that "[s]he's getting her

basic needs provided." The caseworker stated that the foster mother behaves appropriately, is affectionate with A.A. and is open to adoption. The guardian ad litem pointed out that the child had not been put in pre-school as she had recommended.

WISHES OF THE CHILD

{¶30} On behalf of the young child, Ms. Russell, the guardian ad litem, testified that she believes an award of permanent custody is in the best interest of A.A. In her written report, the guardian ad litem recommended permanent custody as being in the best interest of the child "[b]ased on the lack of case plan compliance." The guardian ad litem reported that Mother had begun individual counseling, couples counseling, and substance abuse counseling, but had not yet completed them. Overall, her testimony and her written reports in support of this recommendation are somewhat inconsistent with each other.

{¶31} In her written update, filed on the same day as her testimony was given, the guardian ad litem admitted that Mother had completed parenting classes for 1-4 year olds, but complained that Mother had not completed the class for 5-12 year-olds. On the other hand, in her testimony, the guardian ad litem conceded that it may have been Mother's idea to take the next level of classes that Mother had already enrolled in that class, the group had not yet started, and credited Mother's enrollment as a good idea.

{¶32} The guardian ad litem also stated in her written update that Mother had "allegedly engaged in counseling" at Greenleaf Family Services, but that "Mother has not signed a release of information for this GAL to talk with [the counselor.]" This implies negligence on Mother's part. In her testimony, however, the guardian ad litem conceded that she had not yet requested the waiver from Mother and, since Mother had never been uncooperative in the past, she did not expect a problem in obtaining the waiver. This account is quite different.

CUSTODIAL HISTORY

{¶33} The custodial history of the child reveals that A.A. resided with Mother for the first three years of her life. She was removed from the care of her Grandmother and the step-grandfather. She was then placed in the temporary custody of CSB for sixteen months. During that period, A.A. was placed briefly in one foster home, next with a maternal aunt, and finally in another foster placement. A.A. had been in her current foster placement for nine months at the time of the permanent custody hearing. A.A. is currently four years of age, but was not enrolled in any pre-school, as was recommended by the guardian ad litem.

ALTERNATIVES TO PERMANENT CUSTODY

{¶34} The fourth best interest factor requires consideration of whether there are appropriate alternatives to permanent custody. The caseworker testified that an interstate compact was attempted for one aunt, but the application was denied. An assessment of another aunt was denied on the basis of her history with a children services agency. The caseworker testified that, in her view, permanent custody was in the best interest of the child, based on "the lack of follow-through on the case plan, and the child needs to have permanency, stability, and her basic needs met."

CASE PLAN

{¶35} In the context of these conclusions regarding case plan compliance by the caseworker and because of our concern with the manner in which this case was prosecuted, we find it necessary to address that aspect of the case.

{¶36} The caseworker testified and CSB argued on appeal that Mother made little progress on her case plan objectives. The guardian ad litem claimed in her written report that Mother's efforts have come at the "11th hour after not doing anything for a year." Mother

admitted that she delayed work on her case plan because she was depressed and in shock from losing her child. That may not be a proper excuse for delay, but neither is it unusual for parents in this situation to need some limited amount of time to initiate their work on a case plan. What is somewhat unusual about this case is that CSB moved for permanent custody at an early point – with no apparent compelling justification – and was still amending the case plan even after the motion for permanent custody was filed.

{¶37} The record demonstrates that CSB's motion for permanent custody was filed after just nine months of temporary custody and no extensions of temporary custody were sought by CSB or granted by the trial court. The agency was not in any danger of violating the so-called "sunset" provision of R.C. 2151.353(F).

{¶38} In addition, the original case plan, filed in November 2007, was amended after four months, in March 2008, and was again amended eight months later, in November 2008, two months *after* CSB's motion for permanent custody was filed. The March 2008 amendment included a requirement for a parenting assessment, which Mother promptly completed in April 2008. The assessment report was issued on May 13, 2008. Three months later, CSB filed its motion for permanent custody. Then, two months after the motion for permanent custody was filed, CSB filed another amended case plan, which included the recommendations of the parenting assessment – and even so, the specific recommendations were still not actually included in the case plan, except by reference to the confidential parenting assessment.[2]

[2] In the context of claiming that Mother delayed in complying with her case plan requirements, Caseworker Whalen was asked - by CSB counsel - whether she sat down and reviewed the parenting assessment and its recommendations with Mother when the report was issued in May 2008. The caseworker responded by saying that she reviewed the recommendations with Mother when she put them in the case plan. That, of course, did not occur until November 2008, or six months later, and after the motion for permanent custody had already been filed.

{¶39} This hasty timing may be statutorily permissible, but it is not typical of permanent custody cases unless the child is faced with imminent danger or clearly irreparable conditions in his or her home. Even the parenting assessment did not suggest that Mother could not parent her child. Rather, it suggested that Mother should complete various components of the case plan before the child was returned. Furthermore, the case planning and motion schedule on which this case progressed was unreasonable. Mother had a positive relationship with her daughter, maintained a home with the only man the child has ever known as her father, and was positively engaged in counseling. Mother testified that she would never again leave the child alone with Grandmother, which was, after all, the reason for the initial removal.

{¶40} In stating that Mother had made progress on her case plan, only at the "11th hour," the guardian ad litem implies that Mother unnecessarily delayed until the last minute in working on her case plan. Without doubt, Mother delayed in addressing some aspects of her case plan, but that implication is not wholly accurate. In considering this matter, it must be kept in mind that CSB moved for permanent custody after only nine months, while the case plan was amended at four months and again at eleven months after the original case plan was adopted.

{¶41} In reviewing progress on the four original components of the case plan, the record demonstrates the following. As to the parenting component, Mother had completed one set of parenting classes and was enrolled to take the next age-level of classes by the time of the permanent custody hearing.

{¶42} Second, as to employment or job-training, Mother testified that she lost a job with McDonald's early in these proceedings because of CSB-related appointments, but that she was seeking other work, had completed 20 to 30 applications, and had some prospects, though also noting that it is a difficult time to find employment. In alternative satisfaction of this objective,

Mother had enrolled in a GED program, and had completed both orientation and pre-testing. She was to have her first class on the evening of the first day of the permanent custody hearing.

{¶43} Third, regarding safe and stable housing, Mother was included on a lease, dated October 31, 2008, with Mr. Copeland for a duplex apartment which had been assessed by the caseworker and found to be safe. The couple had basically been in a relationship for five years, though they had had some problems, especially in dealing with the loss of A.A.

{¶44} Finally, as to the case plan component addressing substance abuse, this Court acknowledges that Mother's use of marijuana may be relevant evidence that the trial court could consider. As stressed by the Ohio Supreme Court, however, "the conduct of a parent is relevant * * * solely insofar as that parent's conduct forms a part of the environment of this child." *In re Burrell* (1979), 58 Ohio St.2d 37, 39. This Court has previously held that "'[i]n the absence of evidence showing a detrimental impact upon the child,' [a parent's] marijuana use does not warrant the state in removing [a child] from [his or her] mother's custody." *In re R.S.*, 9th Dist. No. 21177, 2003-Ohio-1594, at ¶13. In reversing a finding of dependency, the Ohio Supreme Court emphasized that "an adverse impact upon the child sufficiently to warrant state intervention * * * cannot be simply inferred in general, but must be specifically demonstrated in a clear and convincing manner." *In re Burrell*, 58 Ohio St.2d at 39. Here, there was a lack of such evidence.

{¶45} Nevertheless, the record demonstrates that Mother began substance abuse counseling with Rebekah Watkins on January 23, 2009, and was reported to be in "good standing." Ms. Watkins described Mother as an active participant and willing to engage in treatment. Mother testified that she was happy to finally be having some success in battling marijuana use because of the help she was getting. She stated she was appreciative of the help

and tools she had gained in addressing the problem, and testified that she wanted to overcome the problem in order to be a better parent. She attended AA and NA meetings, though they were not required, in order to be around those people and to try to do things more positively. Ms. Watkins also discussed employment with Mother and found her to be "sincere" in her efforts to obtain work. As to Mother's inconsistency in submitting drug tests, Ms. Watkins testified that, while it would have been better if Mother had done a drug screen at every visit as requested, that was "relatively typical" of clients. Ms. Watkins' supervisor, with whom Mother also met, described Mother as cooperative and engaged. She was said to be forthcoming with information, willing to work, and took information learned in sessions and began to apply it to her life.

{¶46} Next, under the amendment which only belatedly became a part of the case plan on November 6, 2008, Mother was asked to "successfully complete" individual counseling, including couples counseling with Mr. Copeland before the child would be returned to her home. Despite the timing issues, Mother initiated these matters. She began couples counseling with Dave Tefteller at Greenleaf on November 12, 2008, and individual counseling with Pam Schneir at Greenleaf on December 2, 2008.

{¶47} For his part, Mr. Copeland was asked to engage in couples counseling with Mother, substance abuse counseling, and either anger management or individual counseling. Three months after Mr. Copeland agreed to be added to the case plan and these items were included, CSB moved for permanent custody. According to Mother, Mr. Copeland could not afford to register for anger management until recently because of the $160 cost, but he had participated in a year of anger management sessions in satisfaction of probation terms. He and Mother started couples counseling on November 12, 2008. He did only three random drug screens, but all were negative. In addition, Mr. Copeland has held a full-time job for a year, and

has had a joint lease since October 31, 2008 with Mother on a duplex apartment which CSB had assessed. Also, both Mother and Mr. Copeland consistently attended visitation with A.A. interacted well, and maintained a positive relationship with her.

{¶48} Finally, we express concern with the assistance provided by CSB to Mother. The original case plan indicated that the caseworker would help Mother with food bank vouchers, obtaining utility assistance, and other community resources if needed. The record reveals that the caseworker provided one voucher to a food bank and ten bus passes during these entire proceedings, and there is little evidence that the caseworker assisted Mother with utility or other benefits that might have been available. The caseworker testified that she assisted with housing, as she did for all her clients, by handing Mother three brochures and encouraging her to apply to AMHA. The substance abuse assessor recommended that Mother should be provided with support for case plan compliance, including a referral to vocational counseling and a referral to a benefit coordinator to obtain financial assistance to help pay for the classes required by the case plan. The caseworker said she always asked Mother about her progress, and that Mother never requested help with housing or employment.

{¶49} We recognize that, at present, CSB possesses temporary custody of A.A. We offer no opinion as to whether this mother is a parent whose parental rights should be preserved, for that is not the focus of this appeal. This Court must stress that the right to raise one's children has long been recognized as an "essential" and "basic civil right[.]" See *Stanley v. Illinois* (1972), 405 U.S. 645, 651. The termination of those rights is an alternative of last resort and the parent has no burden to prove that his or her rights should not be terminated. See *In re Wise* (1994), 96 Ohio App.3d 619, 624. It was CSB that had the burden to prove, by clear and convincing evidence, that termination of Mother's parental rights was warranted. See R.C.

2151.414(D). Given the evidence before the court on each of the mandatory best interest factors, we must conclude that CSB did not meet its burden in this case. The assignment of error is sustained.

III.

{¶50} Mother's sole assignment of error is sustained. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is reversed and remanded for further proceedings.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

DONNA J. CARR
FOR THE COURT

MOORE, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

KRISTEN A. KOWALSKI, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.